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Monday, April 16, 2001
UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In re

ASSOCIATED VINTAGE GROUP,

No. 99-13853

[Debtor](#) (s).

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Memorandum on Objection to [Claim](#) of The Alary Corporation

[Creditor](#) Alary Corporation admits that it received a preferential security interest within 90 days of the date of the [bankruptcy petition](#) in this case. Its only defense to the objection of the disbursing agent to its claim is that [confirmation](#) of the debtor's [Chapter 11 plan](#) is *res judicata* as to any disputes which could have been raised before confirmation, so that the objection is barred. Confirmation of a plan generally bars actions not specifically reserved in the plan or the order confirming it. *In re Kelley*, 199 B.R. 698, 704 (9th Cir. BAP 1996). While much of *Kelley* is dicta, the essential holding is that a creditor cannot be "sandbagged" into not opposing or even supporting a plan only to find itself in unanticipated

post-confirmation litigation. In this case, page 14 of the plan specifically reserves in the Disbursing Agent the power to object to claims and avoid transfers and mentions Alary Corporation by name as being the object of possible post-confirmation litigation. Accordingly, the court finds that the specificity requirement of Kelley has been met and the Disbursing Agent is not barred from asserting his claims against Alary. Preference claims can be prosecuted by separate [adversary proceeding](#)ⁱ, or as a defense to the transferee's claim. In re America West Airlines, Inc., 217 F.3d 1161, 1163 (9th Cir. 2000); In re Badger Lines, Inc., 206 B.R. 521, 527 (E.D.Wis.1997). The parties having stipulated that no other issues exist, the objection to the claim of Alary Corporation will be sustained. Counsel for the Disbursing Agent shall submit an appropriate form of order.

Dated: April 16, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)ⁱ

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